

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 521 (CM)

5 DWAIN COLLYMORE,

Plea

6 Defendant.

7 -----x
8 New York, N.Y.
9 February 15, 2018
10:16 a.m.

10 Before:

11 HON. DEBRA C. FREEMAN,

12 Magistrate Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 Interim United States Attorney for the
Southern District of New York

16 JARED LENOW

HAGAN C. SCOTTEN

17 Assistant United States Attorney

18 DAVID STERN

Attorney for Defendant

19 ALSO PRESENT: NATALI TODD

20 KELLY ZOVICKIAN, Paralegal, USAO

1 (Case called)

2 MR. LENOW: Good morning, your Honor.

3 Jared Lenow for the government. With me at counsel
4 table is Kelly Zovickian, a paralegal with our office.

5 THE COURT: Good morning.

6 MR. STERN: Good morning.

7 David Stern for Mr. Collymore.

8 THE COURT: Good morning.

9 First, I want to understand exactly what I have in
10 front of me. I have a third superseding indictment. Was
11 Mr. Collymore presented on each of the charges in the
12 superseding indictment?

13 MR. LENOW: Judge, he just needs to be arraigned on
14 the indictment. He's been presented before on charges related
15 to the incident and bail conditions were set.

16 THE COURT: I'm sorry.

17 MR. STERN: Mr. Collymore has been presented in this
18 case already. He just needs to be arraigned on the new charges
19 in this indictment. This is the third indictment in this case.

20 THE COURT: Has he been presented on those new
21 charges? Was he advised of those charges by a judge?

22 MR. LENOW: No, your Honor. Maybe it's a nomenclature
23 issue, but --

24 THE COURT: He was originally brought in and advised
25 of his rights. A determination was made as to whether counsel

1 should be appointed.

2 MR. LENOW: Yes, your Honor.

3 THE COURT: Was he advised by a judge of the charges
4 and of his rights with respect to those charges?

5 MR. LENOW: No, he needs to be arraigned, your Honor.
6 That's correct. What your Honor just went through is the
7 process we need to go through this morning, the arraignment
8 process.

9 THE COURT: What charges are new?

10 MR. LENOW: Your Honor, each of these counts has been
11 brought before in another -- there has been a slight
12 modification of the wording in these counts. Each count has
13 been brought before. Out of abundance of caution, we think it
14 would be advisable for the Court to arraign him on each of the
15 charges in the S3 indictment.

16 THE COURT: I'm very confused. I hate to clutter up
17 the record with this, but when you say he's been presented on
18 each of the charges, but because there was some wording changes
19 on each of them?

20 MR. LENOW: Your Honor, my explanation was definitely
21 muddled. If I can just clarify.

22 What we're asking is that -- this is a brand-new
23 charging instrument. We would appreciate if the Court -- we
24 think it's necessary for the Court to arraign Mr. Collymore on
25 this charging document, including each of the charges within

1 it. Perhaps we're just using a different phrasing.

2 THE COURT: I'm just going to do the whole thing,
3 because it never hurts to do more.

4 MR. LENOW: Fair enough, Judge.

5 THE COURT: I'm sufficiently confused. In excess of
6 caution, I'm just going to make sure Mr. Collymore understands
7 his rights and understands each of these charges.

8 MR. LENOW: Thank you, Judge.

9 THE COURT: Counsel, are you retained counsel or
10 appointed counsel?

11 MR. STERN: Appointed.

12 THE COURT: CJA?

13 MR. STERN: Yes.

14 THE COURT: Mr. Collymore, the first thing I want to
15 do is advise you of your rights.

16 You have the right to remain silent. You're not
17 required to make any statements. Even if you have already made
18 statements to the authorities, you need not make any further
19 statements. Anything you do say can be used against you.

20 You do have the right to be represented by counsel
21 during all court proceedings, including this one, also any
22 questioning by the authorities. I understand you already have
23 court-appointed counsel representing you here today.

24 The charges that you are facing in this third
25 superseding indictment are, in the first count, a violation of

1 Title 18 of the United States Code, Section 1951, which makes
2 it a crime to conspire with others to commit robbery, as that
3 term is defined under federal law. More specifically, it's
4 charged that you agreed with others to rob individuals who were
5 engaged in the sale of marijuana at a location in the Bronx on
6 or about April 28, 2016.

7 The second count charges you with a violation of Title
8 18 of the United States Code, Section 1951 and 2. More
9 specifically, it's charged that you committed robbery that
10 relates to the same events as Count One, Count One being the
11 conspiracy charge.

12 In Count Three, it's charged that you had violated
13 Title 18 of the United States Code, Sections 924(c)(1)(A)(i),
14 (ii), (iii), and 2, which makes it a crime for a person to use
15 and carry a firearm during and in relation to a crime of
16 violence, specifically, attempted robbery, as charged in Count
17 Two -- I should have said Count Two was an attempted robbery --
18 in furtherance of that crime, to possess a firearm or aid and
19 abet the use, carrying, and possession of a firearm which was
20 brandished and discharged.

21 Count Four charges a violation of Title 18 of United
22 States Code, Sections 924(j)(1) and (2), which makes it a crime
23 for a person during and in relation to a crime of violence --
24 again, the attempted robbery charged in Count Two of the
25 indictment -- to use and carry a firearm and, in furtherance of

1 that crime, possess a firearm and aid and abet the use,
2 carrying, and possession of a firearm and, in the course of
3 that crime, to cause the death of a person through the use of a
4 firearm.

5 Counsel, I assume you've received a copy of the third
6 superseding indictment?

7 MR. STERN: I have, yes.

8 THE COURT: Have you had a chance to read and review
9 it with your client?

10 MR. STERN: We have discussed it, yes. It's almost
11 identical to the prior indictments.

12 THE COURT: Do you waive its public reading?

13 MR. STERN: We do.

14 THE COURT: Mr. Collymore, how do you wish to plead to
15 these four counts of the third superseding indictment?

16 THE DEFENDANT: Not guilty.

17 THE COURT: I also understand that the reason you are
18 here today before me is primarily to proceed, instead, with a
19 plea of guilty on these charges; is that correct, counsel?

20 MR. STERN: Yes, it is.

21 THE COURT: I understand this matter has been referred
22 by Judge McMahon for purposes of a plea.

23 Before I start with the plea, is there anything else
24 that either counsel believes I should be going over with
25 Mr. Collymore?

1 MR. LENOW: No, your Honor. Thank you.

2 MR. STERN: No.

3 THE COURT: Mr. Collymore, this indictment that I just
4 referred to, the third superseding indictment, charges you with
5 felony crimes.

6 You have a right to a trial on the charges before a
7 United States District Judge. If you are found guilty, you
8 will be sentenced by a United States District Judge.
9 Ordinarily, a defendant who wishes to enter a plea of guilty to
10 these types of charges would do that before the district judge
11 as well. That judge would then conduct the so-called plea
12 allocution, which is the question-and-answer session which must
13 accompany the entry of such a plea.

14 With a defendant's consent, however, a United States
15 magistrate judge, such as myself, also has the authority to
16 take a plea. If you were to consent to proceed before a
17 magistrate for the purpose of entering the plea, you would
18 receive all of the same procedural protections as you would
19 receive if you were proceeding before the district judge.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Is it your wish to consent to proceed
23 before a magistrate judge for the purpose of entering a plea?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I have a consent form that's been handed

1 up. It's entitled Consent to Proceed Before a United States
2 Magistrate Judge on a Felony Plea Allocution.

3 Did you sign this form?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Before you signed it, did your lawyer
6 explain it to you?

7 THE DEFENDANT: Yes.

8 THE COURT: Have any threats or promises of any kind
9 been made to cause you to agree to this procedure today?

10 THE DEFENDANT: No.

11 THE COURT: I will accept the consent.

12 In order to take your plea, I must ask you some
13 questions for which I need to place you under oath.

14 Would you please raise your right hand.

15 (Defendant sworn)

16 THE COURT: Please state your full name for the
17 record.

18 THE DEFENDANT: Full name is Dwaine Collymore.

19 THE COURT: Are you a United States citizen?

20 THE DEFENDANT: No.

21 THE COURT: Of what country are you a citizen?

22 THE DEFENDANT: Trinidad and Tobago.

23 THE COURT: May I ask the government if consular
24 notification was made?

25 MR. LENOW: Your Honor, I believe it would have been

1 made at the time of arrest. I will ensure that within today we
2 will confirm that. I can assure the Court either it has been
3 made or we will ensure it will be made today. We will, again,
4 contact the consulate to inform them of today's events.

5 THE COURT: It is a mandatory consular notification of
6 the country.

7 Just so you understand, Mr. Collymore, as a citizen
8 of Trinidad and Tobago, you're entitled to have representatives
9 of your country's consulate who are present in this country
10 notified of the fact that you've been arrested and detained and
11 there are charges against you. It is a country where that
12 notification has been made automatically.

13 I'm going to assume that notification was made at the
14 time of your arrest, but I'm asking the government to follow up
15 on it. If you wish to hear from someone from the consulate of
16 Trinidad and Tobago and you do not, let your attorney know and
17 I'll ask counsel from the government to follow up on that.

18 How old are you?

19 THE DEFENDANT: 33 years old.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: Ninth grade.

22 THE COURT: Did you leave after ninth grade because
23 you were having any difficulties in school with learning or
24 anything, or were there other reasons?

25 THE DEFENDANT: I always had anxiety, so I had a hard

1 time focusing.

2 THE COURT: You had a hard time focusing because of
3 anxiety?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you able to focus on these proceedings
6 today in order to understand them fully?

7 THE DEFENDANT: Like, my problem with focusing is,
8 like, when it comes to, like, reading and stuff, everything's
9 just all over the place, and I can't pay attention to what's on
10 the paper. So I always just run away, like, that's always been
11 my problem.

12 MR. STERN: Judge, I think what we're going to do,
13 with your permission, is I'm going to say the words to him and
14 he'll say them, but he's read this with me and agrees these
15 things are true.

16 THE COURT: We're not anywhere up to his stating what
17 he did that makes him guilty of a crime. When we get to that
18 point, we'll make accommodations, if necessary.

19 MR. STERN: Thank you.

20 THE COURT: Starting with the Consent Form to Proceed
21 Before a Magistrate Judge, which you said you've gone over with
22 your counsel, that's a relatively short form, but did you have
23 any difficulty reading or understanding that form?

24 THE DEFENDANT: No.

25 THE COURT: Have you recently been under the care of a

1 doctor for any reason?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: How about a psychiatrist or a
4 psychologist?

5 THE DEFENDANT: I spoke to this one, but briefly.

6 THE COURT: Same sort of issues that you already
7 described, anxiety, or is there anything else that I should
8 know about? Again, I'm looking for things that might affect
9 your ability to participate fully today.

10 THE DEFENDANT: It's related to anxiety.

11 THE COURT: Do you take any medication?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Did you take your medication as necessary
14 before today?

15 THE DEFENDANT: Last --

16 THE COURT: If you needed it.

17 THE DEFENDANT: Last night I took. I'm supposed to
18 take them at night before bed.

19 THE COURT: You took it last night?

20 THE DEFENDANT: Correct.

21 THE COURT: Again, the reason I'm asking these
22 questions is to make sure that you are able to participate
23 fully in these proceedings today, that you understand what's
24 going on, that you're able to participate voluntarily, with
25 comprehension. If there's any problem, you'll let me know?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you have any condition that affects
3 your ability to see or to hear?

4 THE DEFENDANT: I'm deaf in my right ear.

5 THE COURT: Can you hear me OK?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any condition that affects
8 your ability to think or to reason or to understand or to make
9 decisions or judgments on your own behalf?

10 THE DEFENDANT: Well, with the anxiety it affects my
11 sometimes thinking. You know, in pressure moments it's really
12 off, and I need to concentrate and focus on what's going on. I
13 tend to -- it's like adrenaline.

14 THE COURT: How are you doing with that right now?

15 THE DEFENDANT: Right now I'm OK.

16 THE COURT: Again, if you start to have any problems,
17 you have to let me know.

18 THE DEFENDANT: OK.

19 THE COURT: Because I have to make sure by the end of
20 this proceeding that you are able to function and think and
21 understand throughout the proceeding.

22 THE DEFENDANT: OK.

23 THE COURT: If you're not, you have to say something
24 to your lawyer or say something to me.

25 THE DEFENDANT: OK.

1 THE COURT: Have you ever been treated for drug
2 addiction or alcoholism?

3 THE DEFENDANT: No.

4 THE COURT: As you appear before me, are you under the
5 influence of any kind of drugs or alcohol or medication?

6 THE DEFENDANT: No.

7 THE COURT: Is your mind clear?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you generally feel all right today?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you have any trouble understanding the
12 questions I'm asking you?

13 THE DEFENDANT: No.

14 THE COURT: Have you received a copy of the third
15 superseding indictment in this case?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you had a chance to read it or do you
18 want me to take the time to read it to you?

19 THE DEFENDANT: No, you don't have to.

20 THE COURT: I'm sorry?

21 THE DEFENDANT: You do not have to read it.

22 THE COURT: I do not have to read it.

23 With respect to that document and going through it,
24 did you have any difficulties focusing or understanding what
25 was in the indictment?

1 THE DEFENDANT: Along with my lawyer we went through
2 it, so I understand.

3 THE COURT: OK. You understand what it says you did?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Have you had enough time to talk to your
6 attorney about the charges and about how you wish to plead?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you satisfied with the representation
9 and advice given to you by your attorney? If you have any
10 hesitation, you have to tell me.

11 THE DEFENDANT: Well, I thought I could get something
12 better than that, but I was told there's no way, so I guess my
13 back's against the wall.

14 THE COURT: Do you feel comfortable enough with the
15 advice that you've received that you feel prepared to go
16 forward today, or do you feel that you are not confident
17 regarding the advice and representation you've received and
18 perhaps you should not go forward today?

19 You have to be honest with me.

20 THE DEFENDANT: I really wanted more time, but I was
21 told that today I go to trial on Tuesday.

22 THE COURT: Is this case scheduled for trial on
23 Tuesday?

24 MR. LENOW: Yes, your Honor. The case is scheduled to
25 commence first thing in the morning on Tuesday before Judge

1 McMahon.

2 To follow up on the colloquy that your Honor just had,
3 we've had a conversation with defense counsel. The government
4 has not extended a plea offer. We will not be extending a plea
5 offer. There will be no other offer, no offer made.

6 Here, the defendant is pleading to the indictment
7 pursuant to a Pimentel letter, and there will be no plea offer
8 forthcoming. As Mr. Collymore did state, this is the situation
9 he finds himself in or he will proceed to trial on Tuesday, and
10 no formal plea offer has been made and none will be made.

11 THE COURT: I don't want you to come back later,
12 Mr. Collymore, and say that your lawyer did not fully inform
13 you of your options; that he was in some manner not giving you
14 fair, meaningful, effective representation. I want you to feel
15 confident with the representation you've received as you go
16 forward with the plea.

17 If you're not confident, I will try to find someone
18 else to at least consult with you today. I'm not saying that
19 I'm going to substitute somebody else as a different lawyer,
20 but I will let you consult with someone else to make sure
21 you've had a full opportunity to feel confident in the path
22 that you're saying. But if you're going to trial on Tuesday,
23 you're going to trial on Tuesday. I can't control Judge
24 McMahon's schedule. Your lawyer can ask to have it put off.
25 She may say yes, she may say no.

1 Are there other defendants in the case that would go
2 to trial?

3 MR. LENOW: It's just Mr. Collymore.

4 Judge McMahon's chambers has informed us there will
5 not be a change in the trial date; that it will be going
6 forward on Tuesday.

7 THE COURT: Was there a request for the change?

8 MR. LENOW: There have been two prior adjournments.
9 This will be the third trial date we've had. Judge McMahon's
10 chambers has informed us that it's a firm trial date and will
11 be commencing trial on Tuesday.

12 THE COURT: It sounds like the case is going to go to
13 trial on Tuesday, unless you decide to plead. As I've
14 explained to you, you have every right to go to trial if you
15 wish. You do not have to plead. I'll go through with you what
16 rights you would have at trial and what the circumstances of a
17 plea would be and so on. That's part of what I'm here to do
18 today, but it doesn't sound like there will be more time to
19 consider it.

20 The most I can do is see if I can find another
21 attorney to consult with you for a short time and, if you
22 decide you still want to plead, put you back on my calendar
23 today a little bit later. My calendar is pretty full, but I
24 will do my best to accommodate you, if that's what you want. I
25 just want to make sure you're comfortable going forward today

1 with this plea.

2 What do you want to do?

3 THE DEFENDANT: I would like the opportunity to talk
4 to someone else.

5 THE COURT: We are going to check and see who the CJA
6 attorney is who is on duty today. I don't know if there's a
7 conflict. Is there likely to be a conflict with anyone?

8 MR. LENOW: Your Honor, I'm happy to consult with the
9 clerk's office and make sure there's a conflict-free counsel
10 that is available.

11 THE COURT: I understand the CJA on duty today is
12 running late due to health issues, so everything may get thrown
13 into some turmoil.

14 You should also know that I have pleas scheduled in
15 this courtroom this morning. This was supposed to be 10:00. I
16 have 10:30, 11:00, 11:30, and a 2:30 arraignment, followed by a
17 bail hearing. So it will be tight, but I'll accommodate you.
18 We'll figure it out.

19 I'm going to ask counsel, if you need to make
20 yourselves available, do you have other commitments in the
21 court later today?

22 MR. LENOW: I do, Judge, but I'm sure we'll be able to
23 accommodate the Court's preferred schedule. We'll find a way
24 to make it happen.

25 THE COURT: Just a moment. Let's go off the record so

1 that the government can check with respect to CJA roster and
2 see who's conflict-free. We'll reconvene after we figure that
3 piece out.

4 Off the record.

5 (Recess)

6 MR. LENOW: Your Honor, Jared Lenow and Hagan Scotten
7 with the government.

8 With me at counsel table is Kelly Zovickian, a
9 paralegal at our office.

10 MR. STERN: David Stern for Mr. Collymore.

11 THE COURT: We broke earlier at -- what time was that,
12 counsel?

13 MR. LENOW: Around 10:30, I think, Judge. 10:30,
14 10:45.

15 THE COURT: Approximately 10:30 or thereabouts. It's
16 now quarter to one.

17 In the interim, Natali Todd, who is also on the CJA
18 panel, was good enough to speak with Mr. Collymore and give him
19 some independent counsel.

20 I gather you're all back again. Ms. Todd is here.

21 MS. TODD: Good afternoon, your Honor. Natali Todd.

22 THE COURT: I gather Mr. Collymore is prepared to go
23 forward with the plea; is that right?

24 MS. TODD: That's correct, your Honor.

25 I had a conversation with Mr. Collymore, I think, by

1 my watch, maybe 40, 45 minutes, to discuss his intention to
2 plead or not plead guilty, and whether or not he had any issues
3 with his lawyer and conflict, was he not satisfied, was he
4 confused about the plea.

5 Mr. Collymore assured me, after I had gone through
6 potential conflicts with him, what that would look like, and he
7 assured me that he was quite happy with Mr. Stern; that he did
8 wish to proceed with the plea today; and he understood what the
9 guideline calculations were, what the possible maximum
10 sentences and minimum sentences were. I explained how that
11 might play out at sentencing and all the relevant factors, any
12 medical issues, if that applies, his personal history and
13 characteristics, as 3553(a) dictates, and that all that would
14 be relevant at sentencing.

15 I believe he understood. He tells me that he's
16 prepared to go forward and he's satisfied with his counsel, but
17 the Court should inquire of him directly, just to be clear.

18 THE COURT: Mr. Collymore, I'm hoping that was helpful
19 to you in having a chance to speak with Ms. Todd?

20 THE DEFENDANT: Yes, it was.

21 THE COURT: After hearing from her, are you now
22 satisfied with the representation and advice that you've
23 received from Mr. Stern?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are you prepared to go forward with your

1 plea without questions about the adequacy of your counsel?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Todd, I'm going to thank you for your
4 assistance in this case. I know you have to be somewhere, so
5 I'll let you go where you need to go.

6 MS. TODD: Thank you, your Honor.

7 THE COURT: Mr. Collymore, are you ready to enter a
8 plea?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: There are four counts, as you know, of the
11 third superseding indictment. I'm going to go through them one
12 at a time and I'm going to ask with respect to each how you
13 wish to plead, guilty or not guilty.

14 Count One, as I noted earlier, charges you with
15 participating in a conspiracy to commit robbery under the law
16 that's known as the Hobbs Act, federal law, on or about
17 April 28, 2016, in violation of Title 18 of the United States
18 Code, Section 1951.

19 How do you wish to plead to that count, guilty or not
20 guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Count Two charges you with attempted
23 robbery on that same date in violation, again, of Title 18 of
24 United States Code, Section 1951.

25 How do you wish to plead to that count?

1 THE DEFENDANT: Guilty.

2 THE COURT: Count Three charges you with using,
3 brandishing, and discharging a firearm during and in relation
4 to a crime of violence, specifically the attempted robbery
5 that's charged in Count Two.

6 How do you wish to plead to that charge?

7 THE DEFENDANT: Guilty.

8 THE COURT: Finally, Count Four charges you with using
9 a firearm during and in relation to a crime of violence, again,
10 in the attempted robbery charged in Count Two, and thereby
11 causing the death of a person, which killing constitutes
12 murder, in violation of Title 18, United States Code, Sections
13 924(j)(1) and (2).

14 How do you wish to plead to that charge?

15 THE DEFENDANT: Guilty.

16 THE COURT: I neglected to say Count Three was in
17 violation of Title 18 of U.S. Code, Sections 924(c)(1)(a)(i),
18 (ii), (iii), and 2.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Because you are proposing to enter a
22 guilty plea to each of these charges, I have to ask you some
23 additional questions to be sure that you understand the nature
24 of the charges against you and the consequences of your plea
25 and also to ensure that your plea is voluntary.

1 First, I want you to understand that if you are
2 convicted of the charge in Count One, that's the robbery
3 conspiracy charge, you can face, on that count alone, a maximum
4 sentence of 20 years' imprisonment, a maximum term of
5 supervised release of three years, a maximum fine of the
6 greatest of \$250,000, or twice the gross pecuniary gain or
7 monetary gain that you derived from the offense, or twice the
8 gross pecuniary loss to persons other than yourself resulting
9 from the offense, as well as a mandatory special assessment of
10 \$100.

11 Do you understand all of that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand if convicted on the
14 second count, that's the attempted robbery charge, standing
15 alone, you can face on that count a maximum sentence of 20
16 years' imprisonment; a maximum term of supervised release of
17 three years; a maximum fine of, again, the greatest of
18 \$250,000, or twice the gross pecuniary gain or loss resulting
19 from the offense; and again, a mandatory special assessment of
20 \$100.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that if convicted of the
24 third count, which is the first of the two firearm charges, you
25 could face, on that count alone, a maximum sentence of life

1 imprisonment; a mandatory minimum term of 25 years'
2 imprisonment, which must run consecutively to any other
3 sentence imposed upon you, including the sentences imposed for
4 other counts of this indictment; a maximum fine, again, at the
5 greatest of \$250,000, or twice the gross pecuniary gain or loss
6 resulting from the offense -- and I neglected to say, as well,
7 a maximum term of supervised release of five years; and a
8 mandatory special assessment of \$100.

9 Do you understand all of that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that if you are
12 convicted of the fourth count, standing alone, that's the
13 second of the firearm charges against you, the one that
14 involves the killing of a person, that charge, standing alone,
15 would carry with it a maximum sentence of life imprisonment, a
16 mandatory minimum sentence of five years' imprisonment, which
17 must run consecutively to any other sentence imposed on you,
18 including the sentence for any other count of the indictment; a
19 maximum term of supervised release of five years; a fine in,
20 again, the greatest amount of \$250,000 or twice the gross
21 pecuniary gain or loss resulting from the offense; and again a
22 mandatory special assessment of \$100.

23 Do you understand all of that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that if convicted of all

1 of these counts, the total maximum sentence of incarceration
2 that you could face would be life imprisonment, with a
3 mandatory minimum term of imprisonment of 30 years, which must
4 be imposed to run consecutively to any other sentence,
5 including any other sentence imposed on this same indictment?

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you also understand that, if convicted
9 of these crimes, the Court may order you to pay restitution to
10 any victims of the crimes?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you also understand that if you are
13 convicted, you could be required to forfeit all property, real
14 and personal, that constitutes or derives from proceeds
15 traceable to your crimes?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that if, as part of
18 your sentence, you are placed on a term of supervised release,
19 and you then violate any condition of that release, your
20 supervised release may be revoked and you may face an
21 additional term of imprisonment?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that if that should
24 happen, you may not get credit for time served on supervised
25 release? In other words, the Court could require you to serve

1 in prison all or part of the term of supervised release that's
2 authorized by law for these offenses, without giving you credit
3 for time you may have already serve on supervised release.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that you have a right to
6 plead not guilty to these charges, and the right to a speedy
7 and public trial, and a jury trial, if you wish?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that if you previously
10 entered a plea of not guilty to these charges, no one is
11 requiring you to change your plea and to proceed on a guilty
12 plea?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that if you were to go
15 to trial, the burden would be on the government to prove your
16 guilt by competent evidence beyond a reasonable doubt?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if you were going
19 to go to trial, you would be presumed to be innocent unless and
20 until the government did prove your guilt beyond a reasonable
21 doubt?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand if you were to go to
24 trial by jury, a jury composed of 12 people selected from this
25 district would have to agree unanimously that you are guilty?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that at a trial you
3 would be entitled to be represented by an attorney at all
4 stages, and if you could not afford to hire one, an attorney
5 would be provided to you free of charge?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that your right to be
8 represented by counsel and, if necessary, to have the
9 court-appoint counsel for you, applies not only to trial, but
10 also to every other stage of the proceedings against you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that at a trial you
13 would be entitled, through your attorney, to cross-examine any
14 witnesses called by the government to testify against you?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that at a trial, you
17 would be entitled to testify and to present evidence on your
18 own behalf?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that this means that you
21 would have the right to call witnesses to testify on your
22 behalf?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you also understand that you would be
25 entitled to have the Court issue subpoenas to compel witnesses

1 to appear to testify at trial?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand at a trial you would not
4 be required to incriminate yourself; that is, you would not be
5 required to testify against yourself?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that this means that at
8 a trial you would have the right to testify if you wanted to do
9 so, but no one could force you to testify if you did not want
10 to do so; furthermore, no inference or suggestion of guilt
11 could be drawn if you chose not to testify at trial?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if you go forward
14 with your guilty plea, you will be giving up all the types of
15 protections I've just described, including your very right to a
16 trial, and the only remaining step would be the imposition of
17 sentence by the district judge in this case, who is Judge
18 McMahon?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if any of the
21 answers that you give me today prove to be untruthful, you
22 could face a separate prosecution for perjury or for making a
23 false statement to the Court?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You told me earlier that you were not a

1 United States citizen; is that correct? You're a citizen of
2 Trinidad and Tobago?

3 THE DEFENDANT: That is correct.

4 THE COURT: Do you understand that pleading guilty
5 could subject you to deportation?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that in the
8 circumstances of your case, deportation may be mandatory?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You also understand that as a result of
11 your plea and the conviction that may flow from that, that you
12 may not only be removed from the United States, but you may be
13 denied readmission to the United States in the future and also
14 denied citizenship?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: In light of everything I have now told
17 you, do you still wish to plead guilty?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that the decision as to
20 the appropriate sentence in your case will be entirely up to
21 Judge McMahon?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that Judge McMahon will
24 have discretion in determining your sentence, and her
25 discretion will be limited only by what the law requires for

1 these particularly charged offenses?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that with respect to
4 your sentence, the Court will have the authority to impose an
5 order of restitution, as I mentioned, and the obligation to
6 impose a special assessment?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that in determining your
9 sentence, the Court will also have the obligation to calculate
10 the sentencing guidelines and to consider them, even though it
11 will not be required to sentence you within the guidelines
12 range?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you and your attorney had a chance to
15 talk about how the guidelines may be calculated in your case?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the Court will not
18 be able to determine the guidelines for your case until a
19 presentence report has been completed, and both you and the
20 government have had the chance to challenge the facts that are
21 reported to the probation officer?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that even after the
24 guidelines calculation has been made for a case, the sentencing
25 judge will have the authority to impose a sentence that is

1 either less severe or more severe than the sentence recommended
2 by the guidelines, as long as it's within the statutory maximum
3 for the charged crimes?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that in addition to
6 considering the sentencing guidelines, the Court will also have
7 to consider possible departures from the guidelines, and also a
8 number of different factors on deciding on the appropriate
9 sentence to impose in your case?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you and counsel had the chance to
12 talk about the various factors listed in the relevant provision
13 of law, that's Title 18 of United States Code, Section 3553(a),
14 and about how those different factors may apply to you in your
15 particular case?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you need a moment to confer?

18 THE DEFENDANT: No.

19 THE COURT: Do you understand that those factors
20 include, but are not limited to, the actual conduct in which
21 you engaged, the victim of the offense, the role you played in
22 the offense, whether or not you have accepted responsibility
23 for your acts, whether you have any criminal history, and
24 whether you have engaged in any obstruction of justice?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand that even if you end up
2 shocked and disappointed by your sentence, you will still be
3 bound by your guilty plea?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that under some
6 circumstances, you or the government may have the right to
7 appeal the sentence that is imposed?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that there is no parole
10 in the federal system, and that if you are sentenced to prison,
11 you will not be released on parole?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Understanding everything I've just told
14 you, do you still wish to plead guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I should clarify, with respect to my
17 question about your appeal right, if there's no plea agreement
18 here with an appeal waiver, I shouldn't qualify it by saying
19 "under some circumstances." You understand you would have the
20 right to appeal from your sentence?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I have a copy of a letter from the
23 government dated February 14, 2018, to your counsel.

24 Have you seen this letter from the government?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand that the government's
2 letter is not a plea agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that the purpose of the
5 government's letter is to set forth for you its current
6 position as to how it believes the guidelines would be
7 calculated in your case, the sentencing guidelines?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that based on
10 information currently known to the government, it is its
11 position that, based on the calculations set out in its letter,
12 the sentencing guidelines range on Counts One, Two, and Four of
13 the indictment would be 360 months to life imprisonment; that
14 Count Three requires a mandatory minimum of 300 months'
15 imprisonment to be imposed independently of the sentence on all
16 other counts; and therefore, the guidelines range on Counts One
17 through Four is 360 months to life imprisonment, with a
18 mandatory minimum of 360 months imprisonment.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Off the record for a second.

22 (Off-the-record discussion)

23 THE COURT: Let's go back on the record.

24 When we were off the record, I inquired of the
25 government regarding its guidelines calculation in its Pimentel

1 letter, in light of the fact that both Counts Three and Four
2 include a mandatory minimum term of imprisonment that would
3 have to run consecutively to any other sentence. What's stated
4 in the Pimentel letter in terms of a mandatory consecutive
5 sentence was only with respect to Count Three. So I just
6 wanted some clarification on that.

7 MR. SCOTTEN: Specifically, with respect to the
8 guidelines range, the guidelines work differently for Count
9 Three, which is 924(c), discharge of a firearm, and Count Four,
10 which is 924(j), essentially murder using a firearm in a crime
11 of violence.

12 For 924(j), the guidelines are the murder guidelines,
13 and so the defendant's guidelines on that are 360 months to
14 life. The 924(j) count by itself only has a five-year
15 mandatory minimum in it, so that is subsumed within the 360
16 months to life; that is, essentially the sentence he gets for
17 the 924(j) under the guidelines would be 360 months to life.

18 924(c) works differently. It's a separate guidelines
19 provision. Under that provision, you take the mandatory
20 minimum for the 924(c) and you add it to all of the other
21 guidelines calculations.

22 In this case, because the 924(c) is successor to the
23 (j), the mandatory minimum just for the (c) is 300 months. So
24 you add that to the guidelines for all the other counts, which
25 is why you get 360, plus 300 months. There's no requirement

1 for the (j) if you add that five years on top, because it's
2 already included as guidelines. So it doesn't add even higher
3 guidelines as a result of the (j).

4 Does that parse it out?

5 THE COURT: I appreciate that.

6 MR. SCOTTEN: Thank you, your Honor.

7 THE COURT: Let me go back to what I was saying
8 before, Mr. Collymore, and I'm assuming you've been listening
9 to what the government said as well.

10 Do you understand it is the government's current
11 position that if the guidelines were applied in your case, you
12 could expect the range of a prison term to be from 660 months
13 to life imprisonment, with a mandatory minimum of 360 months?

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you also understand that it is the
17 government's current position that, under the guidelines, if it
18 were applied, the range for a fine in your case would be
19 anywhere from \$50,000 to \$500,000?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that nothing in the
22 government's letter can bind Judge McMahon with respect to a
23 guidelines calculation, and that she will do her own guidelines
24 calculation, which may be different from the ones stated in the
25 government's letter?

1 THE DEFENDANT: Excuse me. Say that again.

2 THE COURT: Do you understand that this is the
3 government's position; it's not necessarily the Court's
4 position? Judge McMahon, prior to her sentencing, will do her
5 own guidelines calculation, which may be the same as what the
6 government has set forth, but it may be different.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that nothing in the
10 government's letter can, in any way, bind the Court with
11 respect to the sentence that it imposes?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that the calculation
14 contained in the government's letter is based on information
15 currently known to the government; and that nothing in its
16 letter will limit the right of the government to change its
17 position at any time as to the appropriate guidelines
18 calculation in your case to present to the Court or the
19 probation office, and all facts relevant to your sentencing or
20 to seek a departure or variance from the guidelines, or to take
21 a position with respect to any departure or guidelines that may
22 be suggested by the Court, by the probation office, or by you?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand the government is not
25 making you any promise as to the sentence that you will

1 receive?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has anyone made any promises of any kind
4 to you to influence you to plead guilty?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have any promises been made to you
7 regarding the sentence that you will receive?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Do you understand that no one, including
10 your attorney or the government or this Court, can give you any
11 assurance as to what your sentence will be, as your sentence
12 will be determined solely by the sentencing judge after that
13 judge has ruled on any challenges to the presentence report,
14 has calculated the sentencing guidelines, and has determined
15 whether there are grounds to adjust the guidelines range or to
16 sentence you outside of that range?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I just note that there seems to be a
19 paragraph in the Pimentel letter as to something that defendant
20 is recognizing with respect to immigration consequences at the
21 bottom of page 4. This is solely the government's letter. I'm
22 not sure why that's there.

23 MR. SCOTTEN: I think that's fair, your Honor. It's
24 stock language. It would be more accurately phrased as a
25 warning to the defendant, but the defendant does not have to

1 recognize anything. Of course if the defendant doesn't agree
2 to the Pimentel, it doesn't really matter that it says that,
3 because, as you point out, the defendant hasn't agreed to it.

4 THE COURT: I have already sought to make sure that
5 Mr. Collymore understands what the potential immigration
6 consequences are of his plea, and I don't believe I need to do
7 more on that.

8 Does the government agree?

9 MR. SCOTTEN: Yes, your Honor.

10 THE COURT: Have any threats been made against you,
11 Mr. Collymore, either direct or indirect, to influence how you
12 plead today?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Is your plea voluntary and made of your
15 own free will?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Before I ask you to explain what you did,
18 let me ask the government please to summarize the elements it
19 would need to establish at trial to sustain each of the four
20 charges.

21 MR. LENOW: Your Honor, on Count One, first, the
22 government would have to prove that two or more individuals
23 agreed to take personal property from the premise of another;
24 second, that this was done by force or threat of force; and
25 third, that this had an effect or would have an effect on

1 interstate commerce had the agreement come to fruition.

2 Count Two. The elements are that an individual took a
3 substantial step towards completing a robbery, that is, the
4 taking of permanent property from the premise of another. This
5 was done by force or threat of force or would have involved
6 those had the attempt come to -- I'm sorry, and do involve
7 those.

8 THE COURT: I'm assuming that defendant took the
9 substantial step.

10 MR. LENOW: Yes, the defendant took that substantial
11 step to take personal property from the premise of another by
12 force or threat of a force, and that this would have had an
13 effect on interstate commerce or did have an effect on
14 interstate commerce if the robbery had come to fruition.

15 The third count would be the firearm count. It
16 involves four elements.

17 The first is that during and in relation to the
18 commission of a crime of violence prosecutable in federal
19 court, here, that's the attempt to commit robbery charged in
20 Count Two, the defendant knowingly used, possessed, or carried
21 a firearm. This use, possession, or carrying of a firearm was
22 in furtherance of a crime of violence, that's the predicate
23 offense. Fourth, the firearm was discharged and, here,
24 specifically alleged that that discharge was on an occasion
25 other than the death of Carlos Vargas.

1 The fourth count here is the firearm count involving
2 the death of Carlos Vargas. The elements there are, first,
3 during and in relation to the commission of a crime of violence
4 prosecutable in federal court, the attempt to commit robbery
5 charged in Count Two, the defendant knowingly used, possessed,
6 or carried a firearm. That use, possession, or carrying of a
7 firearm was in furtherance of the crime of violence charged;
8 that this caused the death of another person through the use of
9 a firearm, here Carlos Vargas. Finally, that the killing would
10 be defined as murder under federal law.

11 With respect to each of these counts, the government
12 would have to prove by a preponderance of evidence that some
13 act, either the conspiracy or the agreement, was formed in or
14 was carried out in the Southern District of New York and, with
15 the other counts, that some act in furtherance of the crime
16 occurred in the Southern District of New York as well.

17 I would also note, while I have the chance to address
18 the Court, that we also want to note that consular notification
19 in this case was made back when the defendant was arrested back
20 in August of 2016.

21 THE COURT: Thank you for following up on that.

22 Can I just quickly ask for clarification on the one
23 date, April 28, 2016, the use or carrying of a firearm for some
24 purpose other than the alleged murder, on occasions other than
25 that murder and then for that. Can I just get a quick

1 understanding from the government as to what facts you'd be
2 looking for that would satisfy both of those things?

3 MR. LENOW: Of course, your Honor.

4 With respect to Count Four, which is the death count,
5 that offense is specifically defined by another person dying by
6 virtue of the use of a firearm. So in this case the evidence
7 would show that the defendant at a point in time pointed a gun
8 at someone and discharged it and that bullet caused the person
9 to die.

10 There was, however, another shooting that occurred in
11 that apartment that was not the murder. Another victim of the
12 robbery was fired at. The bullet fortunately missed that
13 person, so that is the separate conduct. Essentially the
14 attempted murder is the conduct that underlies Count Three.
15 The murder, the firing of a firearm that actually killed an
16 individual, just a separate shooting, is the conduct that
17 underlies Count Four.

18 THE COURT: I see.

19 Mr. Collymore, did you hear counsel for the government
20 summarize the elements that it would need to prove as to each
21 of the charges in order to obtain a conviction against you on
22 each of those separate charges?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that in order to obtain
25 a conviction against you on any particular charge, the

1 government would have to prove each of the elements of that
2 offense beyond a reasonable doubt?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you still wish to proceed with your
5 plea?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you, in fact, commit the four offenses
8 that are charged in the third superseding indictment?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Would you tell us in your own words what
11 you did that makes you guilty of these crimes?

12 MR. STERN: Judge, with your permission, these are his
13 words that he intends to use, but he's going to have trouble
14 reading them, so I'm going to read them and he's going to
15 repeat it, but they are, in fact, his words.

16 THE COURT: Mr. Collymore, I'm going to ask you to
17 confirm to me, after you give me this information, that these
18 are, in fact, your own words and not the words of counsel. All
19 right? Go ahead. You may proceed in this way.

20 THE DEFENDANT: On April 28, 2016 --

21 THE COURT: I'm sorry. April 28; is that right?

22 MR. STERN: 28.

23 THE DEFENDANT: In the Southern District of New York,
24 I agreed with others to commit robbery. We agreed to rob
25 people engaged in the sale of marijuana at 22466 Marion

1 Avenue -- 2466 Marion Avenue.

2 THE COURT: 2466 Marion Avenue. That's in the Bronx;
3 is that right?

4 THE DEFENDANT: Yes.

5 On that same day, I, along with others, tried to rob
6 the spot at 2466 Marion Avenue.

7 During the robbery, I possessed, brandished, and
8 discharged --

9 THE COURT: Possessed, brandished, and discharged; is
10 that right?

11 THE DEFENDANT: Correct.

12 A gun, which I fired at someone other than Carlos
13 Vargas.

14 THE COURT: Let me make sure I have the name properly.

15 MR. STERN: Carlos Vargas.

16 THE COURT: Carlos Vargas.

17 THE DEFENDANT: That same day I used a weapon, a
18 firearm, and killed Carlos Vargas.

19 THE COURT: Let me make sure that I'm following
20 everything.

21 You agreed with other people that you would either rob
22 or certainly try to rob people engaged in the sale of
23 marijuana. I got that much correct, right?

24 THE DEFENDANT: Correct.

25 THE COURT: Then you went ahead in accordance with

1 that agreement to try to commit that robbery, right?

2 THE DEFENDANT: That's correct.

3 THE COURT: In the Bronx.

4 In connection with that robbery, am I right in
5 understanding that you possessed a firearm, and that you took
6 out that firearm and, in fact, shot it at two people?

7 THE DEFENDANT: That's correct.

8 THE COURT: One of the people was Carlos Vargas, and
9 he died from that shooting; is that right?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You also shot at someone else who was not
12 hit by a bullet; is that right?

13 THE DEFENDANT: That's correct.

14 THE COURT: Did you understand what it was you were
15 doing when you agreed to try to commit this robbery? Did you
16 understand that's what you were agreeing to do?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All of this use of a gun, am I right in
19 understanding that was all in furtherance of trying to rob
20 these drug dealers; is that correct?

21 THE DEFENDANT: That's correct.

22 THE COURT: The words that you spoke to me, with the
23 assistance of your counsel, were those your own words?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do either counsel believe that any

1 additional facts need to be elicited for a satisfactory
2 allocution to any of the counts?

3 MR. LENOW: No, your Honor.

4 THE COURT: Counsel?

5 MR. STERN: No.

6 THE COURT: Do either counsel believe there are any
7 additional questions of any kind that should be asked of
8 Mr. Collymore?

9 MR. LENOW: No, your Honor.

10 MR. STERN: No.

11 THE COURT: Do either counsel know of any reason I
12 should not recommend that Judge McMahon accept this plea?

13 MR. LENOW: No, your Honor.

14 MR. STERN: I do not.

15 THE COURT: Then based on my colloquy with
16 Mr. Collymore, I conclude that he understands the nature of the
17 four charges in the third superseding indictment, and the
18 consequences of his plea to those charges. I am also satisfied
19 that his plea is voluntary and there is a factual basis for the
20 plea.

21 I'll also note for the record that I see no issue with
22 respect to Mr. Collymore's competence to enter a plea. He
23 seemed fully able to participate in these proceedings today.

24 As has already been noted on the record earlier, when
25 he expressed hesitation previously about proceeding, we did

1 take a fairly substantial break and retained another attorney
2 to consult with him. I'm satisfied with his response that he
3 was then comfortable with going forward.

4 Accordingly, for all these reasons, I recommend that
5 Judge McMahon accept the proffered plea to the four counts of
6 the indictment in 16 Cr. 521.

7 Has Judge McMahon set a sentencing date?

8 MR. LENOW: No, your Honor.

9 THE COURT: Let's have a control date 90 days out.

10 May 16. Please be in touch with Judge McMahon's
11 chambers about that.

12 Is there any issue here as to bail?

13 MR. STERN: No.

14 THE COURT: I'm going to ask the government to prepare
15 the prosecution case summary for the purposes of the
16 presentence report, and to deliver that to the probation
17 department no later than two weeks from today.

18 I'm also going to ask defense counsel to contact the
19 probation department to schedule a presentence interview of
20 your client, also to be held within two weeks. Please make
21 yourself available for that interview so that the matter can be
22 moved along.

23 Counsel, I assume the government will order a copy of
24 the transcript of this allocution?

25 MR. LENOW: Yes, your Honor.

1 THE COURT: Please submit that, together with any
2 necessary additional paperwork, to Judge McMahon so that she
3 may act on my recommendation.

4 Is there anything else?

5 MR. LENOW: No, your Honor.

6 Thank you for your time.

7 MR. STERN: Not from us. Thank you.

8 THE COURT: Best of luck to you, Mr. Collymore.

9 (Adjourned)

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